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Re: Microsoft Settlement

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Another Pound of Microsoft

In a perfect world, Microsoft's anti-trust headaches would have ended in November when it settled with the Justice Department. But a perfect world wouldn't have nine state attorneys general who still object to the deal and plaintiffs' lawyers whose main job is to shoot the wounded.

Such imperfection is why we are today faced with yet another strange Microsoft settlement. This one is over the more than 100 class-action lawsuits filed by consumers who claim Microsoft's "monopolistic" pricing policies meant they were overcharged for Windows software.

Reasonable people might wonder how Microsoft could be guilty both of undercutting competitors' prices (a government claim) and charging consumers too much. But if the only goal here is for class-action attorneys to exact their own pound of flesh, the claims make perfect sense.

Microsoft agreed to settle the lot by donating more than \$1 billion in cash, software, computer equipment and support to 14,000 impoverished schools; as the opposing attorneys put it, this provided a "social benefit." This latest humbling was under way when Apple Computer complained that the deal was anticompetitive. U.S. District Judge Frederick Motz agreed and last week quashed the settlement—though holding out hope it might be revived at a higher price.

What a spectacle. It's understandable that Microsoft wants to end years of litigation and get on with life as a software company. But the truth is that this latest act of penance will serve no one but the legal firm of Corporate Shakedown & Artists.

Microsoft probably won't gain by going forward. The company may have seen this as a way to score some public relations points while concluding the litigation. Instead, Apple did its own PR job, making it look as though Microsoft was using the settlement to monopolize the schools market.

Nor are schools benefiting. Studies show that simply adding computers to failing environments doesn't help.

These are some of the most disadvantaged facilities in the country; what they need are real curriculums, devoted teachers and (we might add) competition, not the latest version of Microsoft Outlook.

And then there's the judicial branch, which once again finds itself drawing lines in the sandbox between Microsoft and its competitors. In retrospect, what motivated the government's own case was Microsoft's competitors—Netscape, Oracle—which used the courtroom to accomplish what they couldn't in the marketplace. Judge Motz now faces the similarly unpleasant task of apportioning tech markets.

Finally, there's the matter of the plaintiffs. Ridiculous as the suits are (America's cheap technology prices are the envy of the world), these people expected something. Instead, their lawyers realized that parceling out a settlement would mean each of the 65 million consumers who had "overpaid" would get the grand sum of \$10, and crafted the school option instead.

Someone benefits, of course. Tucked into the bottom of the deal was a line stating that, in addition to the school gift, Microsoft would be able for "reasonable" attorney fees to be determined by the court. Seeing how the plaintiffs' attorneys in question are Michael Hausfeld and Stanley Chesley—the class-action wizards who have sued cigarette makers, gun makers, IBM, Goodyear, Texaco—you get the picture—"reasonable" in their minds is a percentage. Most guys tend to get a bare minimum of 10% to 15%. So consumers get a "social benefit" and the lawyers could get a cool \$150 million.

We've seen this so many times, it's like a bad cable movie. Microsoft, too, knows how the story goes. Whether the lawsuits are frivolous or not, its options are the same: The company can chance years of litigation, in dozens of cases, or it can simply sign over one big, hundred-million-dollar payoff to the plaintiffs' bar. Sooner or later the U.S. political system has to come to grips with this kind of legal extortion.